

DONALD A. HERL)
Claimant)

VS.)

TREGO COUNTY LEMKE MEMORIAL HOSPITAL)
Respondent)

AND)

UTICA NATIONAL INSURANCE COMPANY)
Insurance Carrier)

In contrast, claimant requests the Appeals Board to affirm the Administrative Law Judge's preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board finds the Administrative Law Judge's preliminary hearing Order should be affirmed.

The Administrative Law Judge's April 21, 2000, preliminary hearing Order, also contained his decision to set aside K-WC Form D, Settlement Agreement Final Receipt and Release of Liability, entered into by the claimant on June 17, 1999, for the March 16, 1998, accident. The Appeals Board has addressed this decision in another Order entered on this same date, finding that the appeal should be dismissed because the Appeals Board does not have jurisdiction to review an interlocutory order.

The Administrative Law Judge found the June 17, 1999, K-WC Form D, Settlement Agreement Final Receipt and Release of Liability, signed by the claimant, constituted a written claim for compensation for the March 16, 1998, work-related accident. The written claim was timely because it was made within 200 days of the last payment of compensation.¹ The Appeals Board agrees and adopts the Administrative Law Judge finding as its own.

The Administrative Law Judge also found that claimant sustained additional injury on September 1, 1999, when he slipped on water at work and fell on his head. After the fall, the claimant was placed in a wheelchair and taken to respondent's emergency room for treatment of lacerations to his left elbow and scalp. At the emergency room, stitches were required to close claimant's lacerated left elbow and scalp.

The Administrative Law Judge found, and the Appeals Board agrees, that claimant's testimony coupled with the medical record from the respondent's emergency room dated September 1, 1999, prove claimant fell at work on September 1, 1999, and suffered injury to his left elbow and scalp. The respondent had timely notice of accident because respondent had actual knowledge of the fall.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bruce E. Moore's April 21, 2000, preliminary hearing Order should be, and it is hereby, affirmed in all respects.

¹See K.S.A. 44-520a.

IT IS SO ORDERED.

Dated this ____ day of September 2000.

BOARD MEMBER

cc: M. John Carpenter, Great Bend, KS
Jeffrey S. Austin, Overland Park, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director